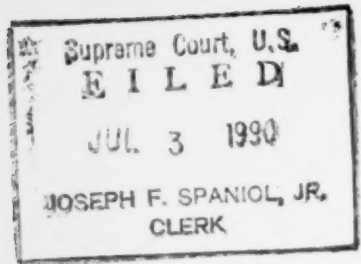


NO:



THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

SYLVIA J. DENNIS, Petitioner

v.

CITY OF MIDDLETON, WISCONSIN,

TIMOTHY R. STUDER,

JOEL G. DEVORE,

Respondents.

PETITION FOR WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Sylvia J. Dennis, pro se
3001 W. Beltline Hwy.
Middleton, WI 53562
(608) 831-5790 Home
(608) 266-3865 Work

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RULE 14.1(C)

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14.1(a) QUESTIONS PRESENTED FOR REVIEW:

1. DID THE CITY OF MIDDLETON VIOLATE MY PERSONAL, CIVIL AND CONSTITUTIONAL RIGHTS BY PLACING THE CITY CLERK/RELIEF DIRECTOR AT THE BOTTOM OF THE CITY ORGANIZATIONAL STRUCTURE (PRIOR TO MY EMPLOYMENT) WITH THE LOSS OF AUTHORITY AND RECOGNITION THAT SUCH STRUCTURE IMPLIES?

2. CAN THE ELECTED OFFICIALS DEPRIVE A STATUTORY OFFICER OF THEIR OFFICE WITHOUT GOOD CAUSE AND TRANSFER THAT AUTHORITY TO ANOTHER OFFICIAL WITHOUT TRANSFERRING THE TITLE OR THE DUTIES?

3. DID MR. STUDER AND MR. DEVORE VIOLATE MY CIVIL AND CONSTITUTIONAL RIGHTS (ESPECIALLY FIRST AMENDMENT FREEDOM OF SPEECH AND COMMUNICATIONS) BY THEIR ACTIONS AND DEPRIVE ME OF MY OFFICE?

WERE THERE DUE PROCESS VIOLATIONS IN MY SECOND AND FOURTH GRIEVANCES?

I AM ALLEGING WRONGFUL DISCHARGE AND SEEKING REINSTATEMENT AS CITY CLERK.



RULE 14.1(B)

PARTIES TO THE CASE

SYLVIA J. DENNIS

CITY OF MIDDLETON, WISCONSIN, (a municipal corporation)

TIMOTHY R. STUDER

JOEL G. DEVORE

RULE 14.1(d) OFFICIAL AND UNOFFICIAL REPORTS

June 6, 1990-Seventh Circuit Court of Appeals

ORDER in Case No. 90-1897

April 4, 1990-Seventh Circuit Court of Appeals

JUDGMENT-WITHOUT ORAL ARGUMENT and ORDER

in Case No. 89-1209

Dec. 5, 1988 - State of Wisconsin, Dane Co.

Circuit Court, Judge DeChambeau

July 8, 1985 - State of Wisconsin, Dane Co.

Circuit, Judge Richard Bardwell's DECISION

AND ORDER in Case No. 85-CV-2567.

Jan. 20, 1989 - U.S. District Court for the

Western District of Wisconsin Case 88-C-1057-S

Mar. 19, 1990 - U.S. District Court for the

Western District of Wisconsin, Case 89-C-1096-S.

CASES:

Abbot Labs v. Gardner, 387 US 136, 149 (1967)

Anderson v. City of Bessemer City

Ann Hopkins v. Price-Waterhouse,

Baier

Barnes v. District of Columbia, 91 US 540,

544 (1875)

Basiardanes v. City of Galveston

Bell v. Birmingham Linen Service

Bishop v. Wood

Buck v. Bell, 274 U.S. 200 (1927)

Buckley v. Valeo, 424 US 1, 117 (1976)

Bundy v. Jackson, 641 F.2d 934, 943-44 (DC

Cir. 1981)

Carey v. Phiphus

Century Elec. Serv. & Repair, Inc. v. Stone,

193 Colo. 181, 183-84, 564 P.2d 953, 955

(1977)

City of Atlanta v. Myers

City of Denver v. Sweet

City of Fargo, Cass County v. Harwood Township

City of Fort Collins v. Public Utilities

Comm'n, 69 Colo.554, 195 P. 1099,1100

(1921)

City of Lafayette v. Louisiana Power & Light

Co., 435 US 389, 408 (1978) 102 S. Ct 835,

(1982) rev'g. 620 F.2d 704 (10th Cir.)

Rev'g 485 F.Supp. 1035 (D. Colo. 1980).

Dinnan v. Board of Regents

Duke Power Co. v. Carolina Env'tl. Study

Group, Inc., 438 US 59, 81-82 (1978)

Furno Construction Corp v Waters

Gilmere v. City of Atlanta,

737 F.2d 894 (11th Cir. 1984) and 774 F.2d

1495 (11th Cir. 1985)

Grosjean v. American Press Company, 297 US

233 (1936)

Keyes v. School Dist No 1, 413 US 189,207-08,

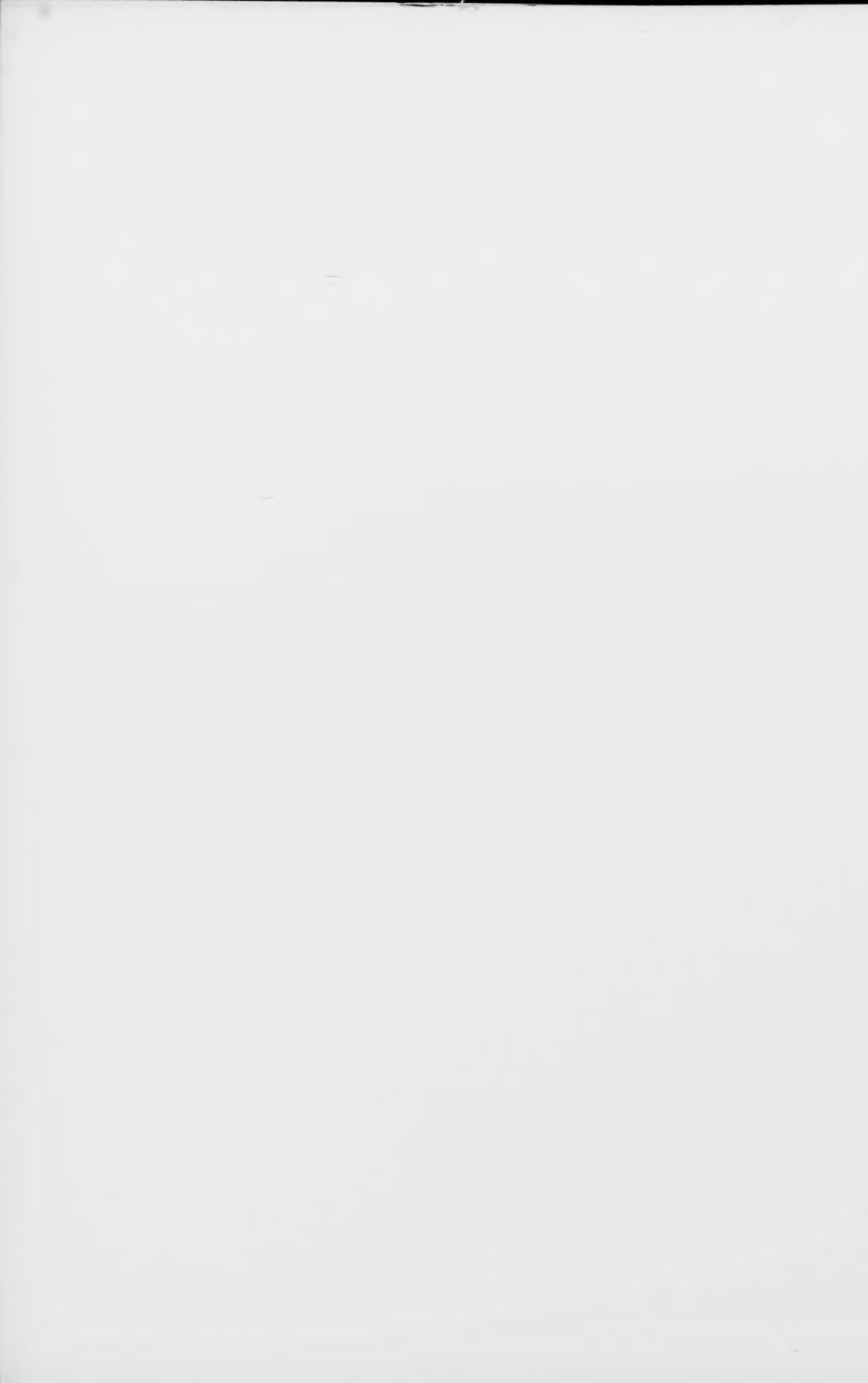
(1973)

Lane v. City of Tulsa, 402 P.2d 908

(Okla.1965)

Letter Carriers v. Austin, 418 US 264, 41 L

ED 2d 745, 94 S. Ct. 2770.



Litten v. City of Fargo, 294 NW. 2d 628 (N.D.
1980)

Marbury v. Madison, 1 Cranch 137 (1803)

Mt. Healthy City School District Board of
Education v. Doyle,
Olmstead v. U.S. (1928)

Pension Benefit Guaranty Corporation v. LTV
Corporation,

Rodgers v. United States Steel Corp, (Rodgers
II) 536 F.2d 1001 (3rd Cir. 1976)

Rutan v. Republican Party of Illinois

Sailors v. Board of Educ., 387 US 105, 109
(1967)

Shawgo v. Spradlin

Shore precedent

State ex rel. Mowrer v. Underwood, 137

Ohio St. 1, __, 27 NE.2d 773, 775-76 (1940)

Tyson v. Banton, 273 U.S. 418 (1927)

United Mine Workers v. Gibbs, 383 U.S. 715
(1966)

United States v. Chagra

United States v. Topco Assocs.Inc., 405 US
596 (1972)

United States v. W. T. Grant Co., 345 U.W.
629, 632 (1953)

Whitney v. California, 274 U.S. 357 (1927)

Williams v. Eggleston, 170 US 304, 310 (1898)

Williams v. Mayor of Baltimore,

STATUTORY REFERENCES:

Wis. Statute 19.34 Open Records Law

Wis. Statute 61.09(11) Officers

Wis. Statute Ann. Sec. 62.06(1) (West 1957)

U.S. Code, Title 18, Sec. 241

42 U.S.C. Sec. 1983 (1982) (Supp. V 1981)

1871 Civil Rights Act

Clayton Act, section 4

Sherman Act

Wisconsin Constitution

U.S. Constitution - Preamble, First,
Tenth, Fourteenth Amendments



RULE 14.1(e)(i)

CONCISE STATEMENT OF THE GROUNDS

Two cases on appeal from the United States Court of Appeals in Chicago, dated

April 4, 1990 and June 6, 1990.

RULE 14.1(e)(iv) STATUTORY PROVISION BELIEVED TO CONFER ON THIS COURT JURISDICTION.

The Preamble, First Amendment, Tenth Amendment, and Fourteenth Amendments to the United States Constitution.

RULE 14.1 (f) CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE.

IF LENGTHY, JUST CITATION. (IN APPENDIX)

Preamble and Bill of Rights to U.S.

Constitution

Wisconsin Statutes 19.34 and 62.09

Middleton General Ordinance 2.03



RULE 14.1(g) CONCISE STATEMENT OF THE CASE

September 18, 1979 - Organizational structure
adopted by Common Council

June 14, 1982 - First day of work as City

Clerk/Relief Director

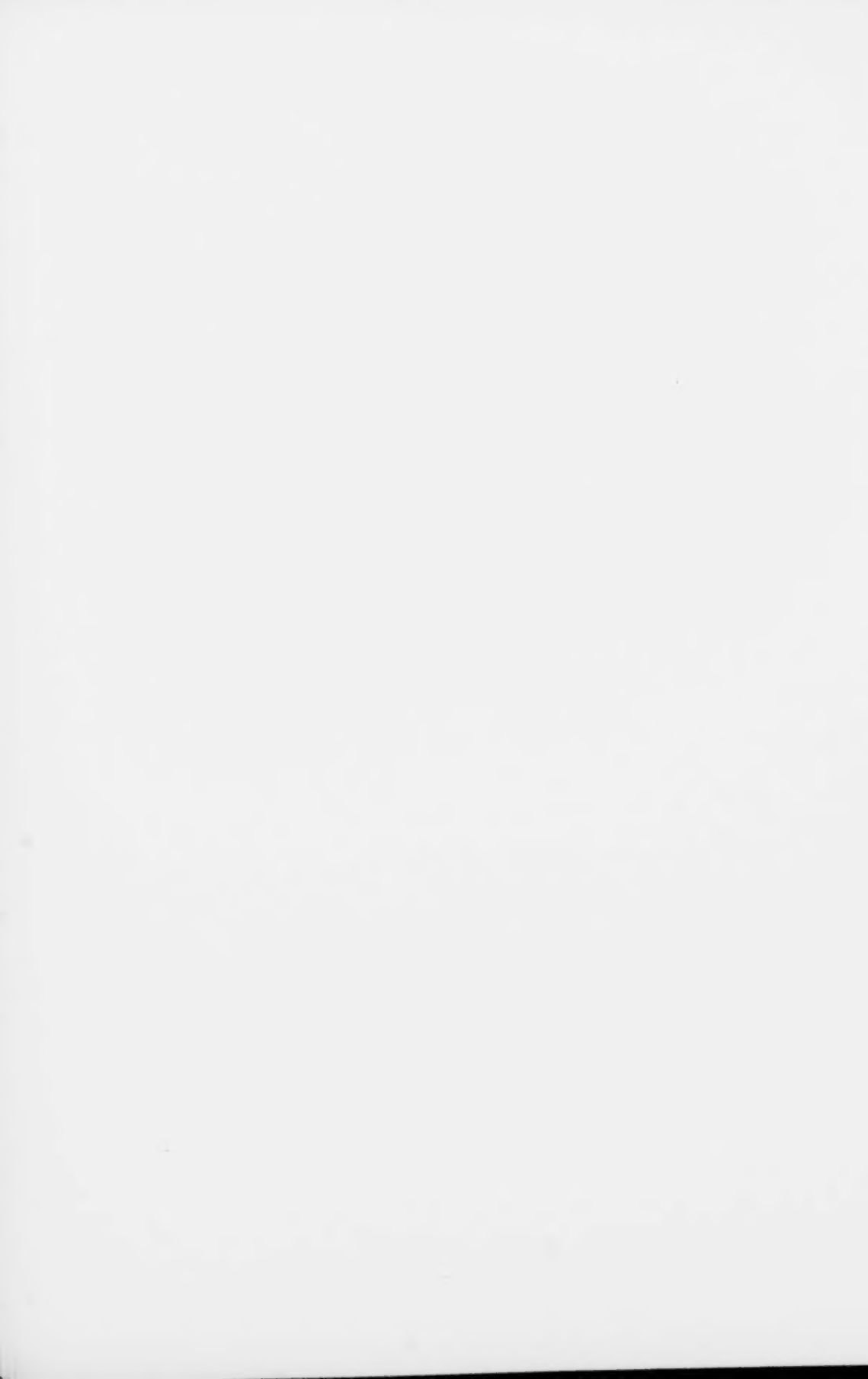
June 15, 1982 - Mr. Studer volunteered to take
Council minutes for me and left my appointment
out of the Minutes.

December 9, 1982 - Received City Attorney's Opinion
on welfare
appeal process, Mr. Studer was acting as
appeal authority rather than the Board.

September 9, 1983 - "Throw it in the
wastebasket" memo

November 1, 1983-Correspondence/Memorandum
regarding "editing" the 1982 Board of
Review Minutes by Mr. Studer although he
was not even at the meeting

April 27, 1984 -RECEIVED FIRST REPRIMAND.



August 21, 1984 - Adoption of Resolution 1984-21 that no City employee is authorized to obtain a City Attorney's Opinion except at the direction or with the prior consent of the Common council, the Mayor, or the City Administrator.

November 9, 1984 - RECEIVED SECOND REPRIMAND for taking two hours off after the Nov. 6, 1984 Presidential election when I worked until midnight.

January 2, 1985 - RECEIVED THIRD REPRIMAND (Two days without pay) for refusing to move out of my office and into the Council Chambers on the deadline for filing nomination papers.
January 11, 1985 - RECEIVED FOURTH REPRIMAND. (Four days without pay) for talking to the High School class about city government.

(See Chronological list in Lodging Exhibits)



RULE 14.1(H) ASSIGNMENT OF ERRORS

I was hired as the City Clerk/Relief Director.

The Middleton Common Council never acted on my grievances because Mr. Studer and Mr. DeVore interpreted the ordinances to claim that I was not supervisory and not a Department head.

Most of the cases have one or two obvious errors.

RULE 14.1(i) BASIS FOR FEDERAL JURISDICTION IN THE U.S. COURT - WESTERN DISTRICT OF WIS.

Violation of First Amendment - Freedom of Speech and Due Process violations and other constitutional violations.

RULE 14.1(j) DIRECT AND CONCISE ARGUMENT
AMPLIFYING THE REASONS RELIED ON FOR THE
ALLOWANCE OF THE WRIT.

Violation of my constitutional rights to freedom of speech, secure in my property, due process, and privacy. I was doing a good job and doing my duty. I should be rewarded, not punished.

I assert that the Mayor and Common Council did not enact this structure, under the preamble of the Wis. Constitution;

"We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare, do establish this constitution" or under the preamble clause of Constitution of the United States;

"We, the people of the United States, in order to form a more perfect Union, establish

Justice, insure Domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America," but for their own temporary convenience and political expediency.

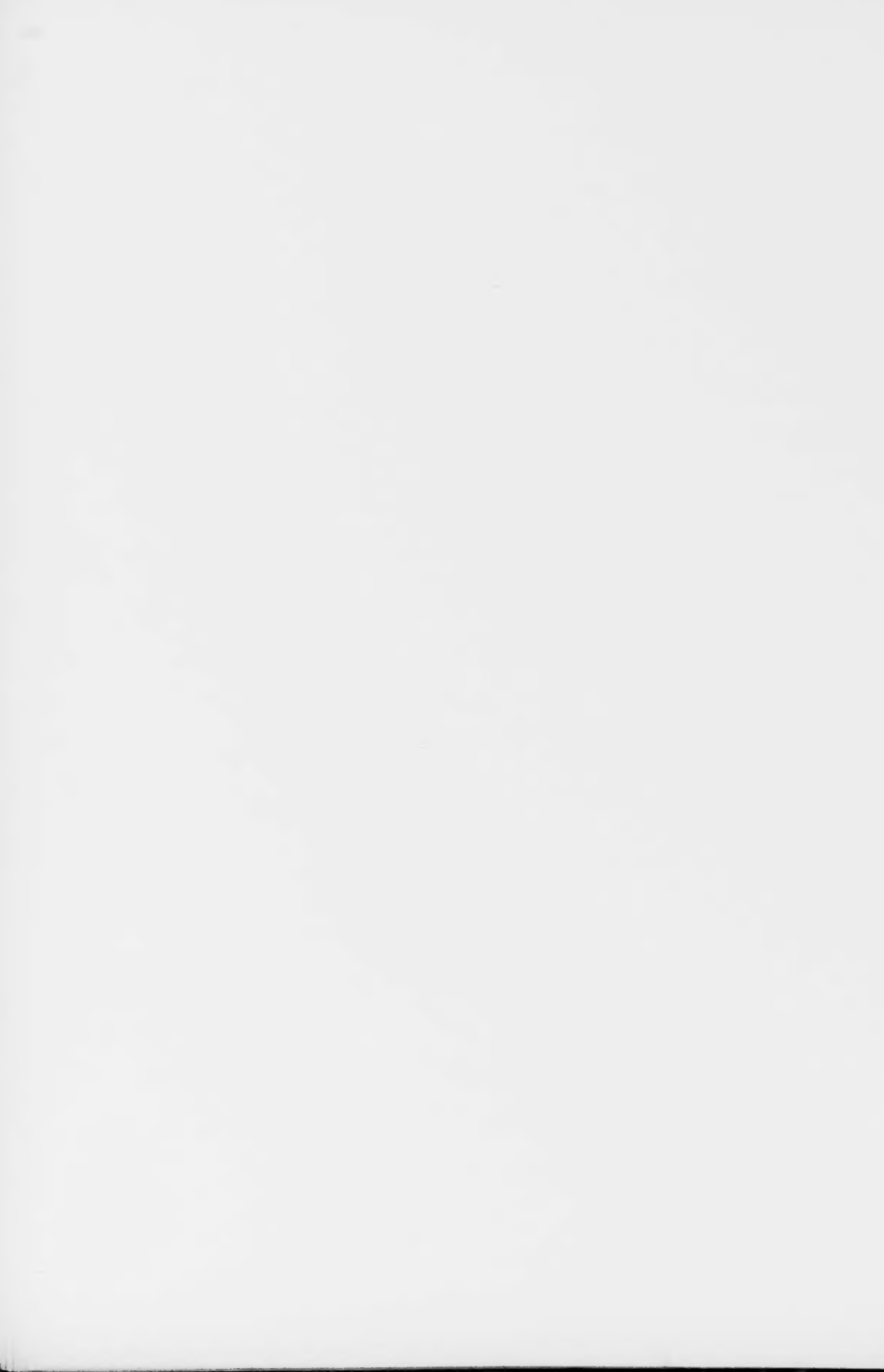
Professor Karin Clauss of the U.W. Law School stated in my administrative law class, "a person cannot give up their constitutionally protected interest in the integrity of their office," according to the Shore precedent.

The organizational structure of the City of Middleton, as depicted in an organizational chart adopted by the Common Council on September 18, 1979, leaves the City Clerk out completely! (Lodging Exhibit #1) Under their elected Mayor-Common Council form of government, the highest ranking official is



the City Administrator (no statutory officer) who is also the duly-appointed Deputy Clerk and Deputy Treasurer. See affidavits (Lodging Exhibit #2)

Under him are the line positions (Department Heads). The City Clerk is still not listed. Who conducts the elections?? A ghost? This chart degrades the office that is the very basis of our democracy, the bones of our government, the "workhorse" of the election system, where everyone can participate without charge and seek representation. It says elections are not important! It violates Article I of the Wisconsin Constitution, Equality;inherent rights. Section 1 " All people are born equally free and independent, and have certain inherent rights; among those are life, liberty and the pursuit of happiness; to serve these rights, governments are instituted, deriving their just powers fom the consent of the governed"



and Rights of Suitors. Section 21, (2) "In any court of this state, any suitor may prosecute or defend his suit either in his own proper person or by an attorney of the suitor's choice" and by Section 22, Maintenance of free government. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."

The Clerk-be it Town, Village or City-is the first person hired, to keep the records, take the Board or Council minutes, to conduct the elections upon which our officials represent the people, to receive claims, to collect monites, and to pay the bills. The Clerk is the essential person in a democracy.

Under the Financial Director/Treasurer's internal Chart, next to the account clerk's position, is the City Clerk/Relief Director listed as staff. As Police Chief William Franken once said, "This is a power grab."

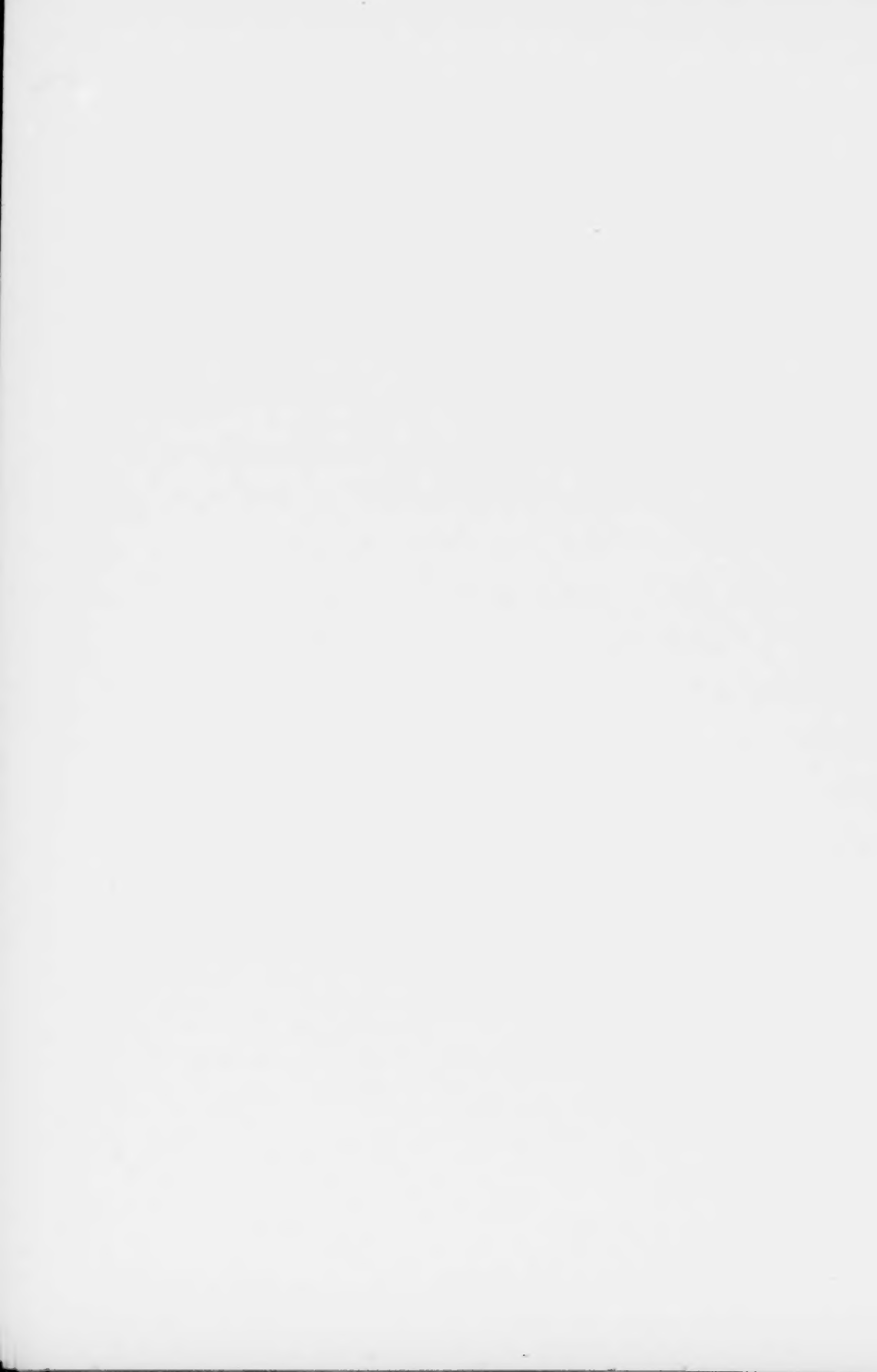
Under Wisconsin Statute 62.09 Officers

(11) Clerk (i) He (She) may in writing filed in his office appoint a deputy, who shall act under his direction, and in his absence or disability or in case of a vacancy shall perform his duties, and shall have power to administer oaths and affirmations. (Lodging

Exhibit #3) This city organizational structure had conflicting lines of authority, the City Administrator/Deputy Clerk cannot be above me and under me at the same time.

There was also no precedent for such a structure and no real evaluation of job duties and time constraints.

I have reviewed all the county directories for the state, and many counties list the Clerk as a Department Head, including the City of Sturgeon Bay, and it appears that we should try to maintain order in the state.



"Order is the sanity of the mind,
the health of the body, the peace of
the City, the security of the state.
As the beams to a house, as the bones
to a microcosm of man, so is order to
all things." Southey

At the hearing on my motion for a temporary injunction, (which I received) Judge Bardwell expressed incredulity at the notion that someone other than the City Clerk could be the "Department Head" of the City Clerk's Department.

As I read the municipal ordinance, among other things, the Department Head may discipline people in that Department.

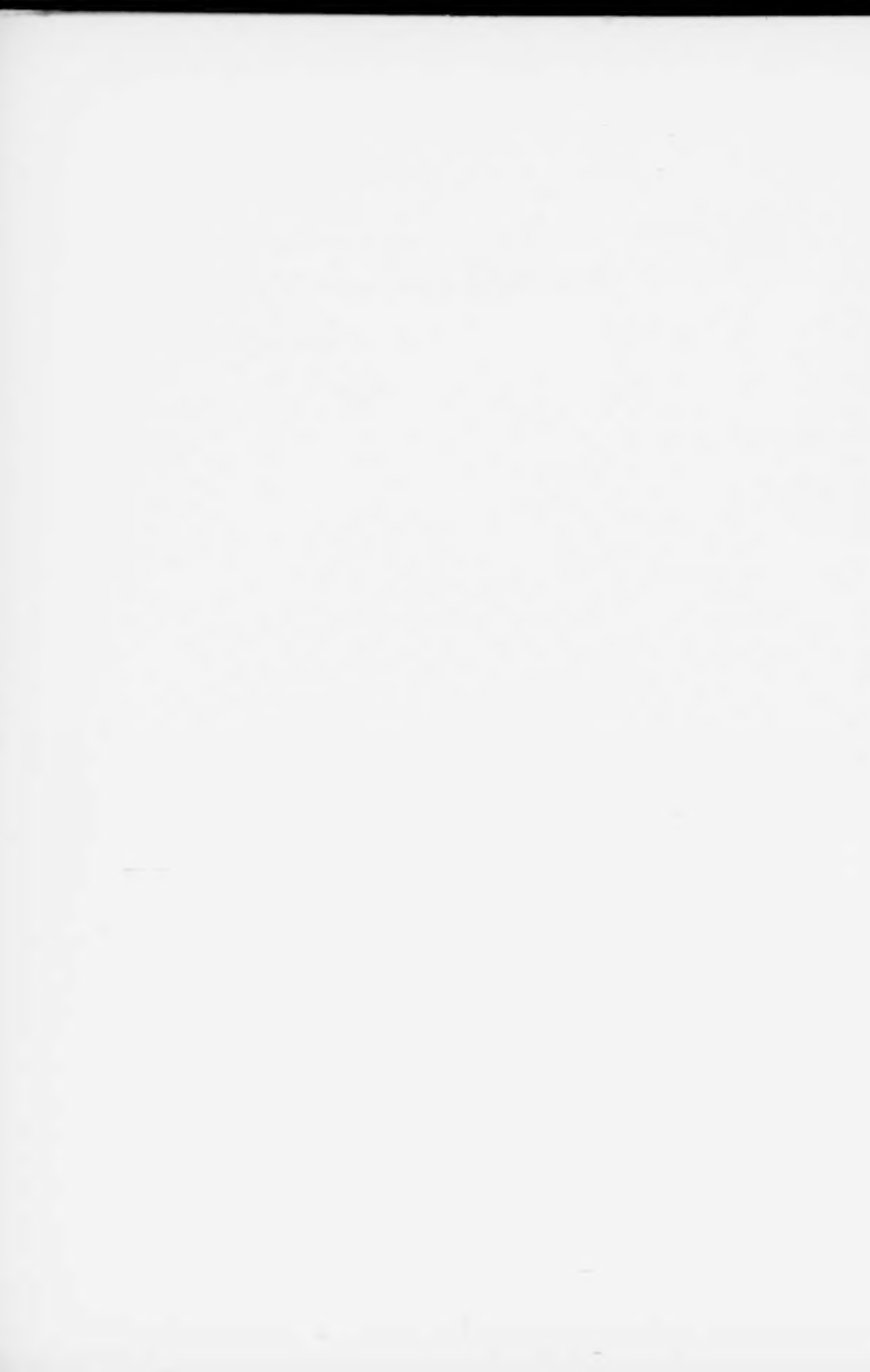
So I guess what the argument of the City here is that Ms. Dennis is in a Department which is Mr. Studer's Department, and it's a little hard for me to see that. [The] City Clerk usually is a Department by itself, I mean, just historically and under the statutes. (Hearing transcript, page 6, May 21, 1985).

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Judge Bardwell apparently was unconvinced by Mr. Devore's testimony, however, because he had to conclude that Mr. Studer was not the Clerk's Department Head when he enjoined Mr. Studer from disciplining the plaintiff in her capacity as City Clerk.

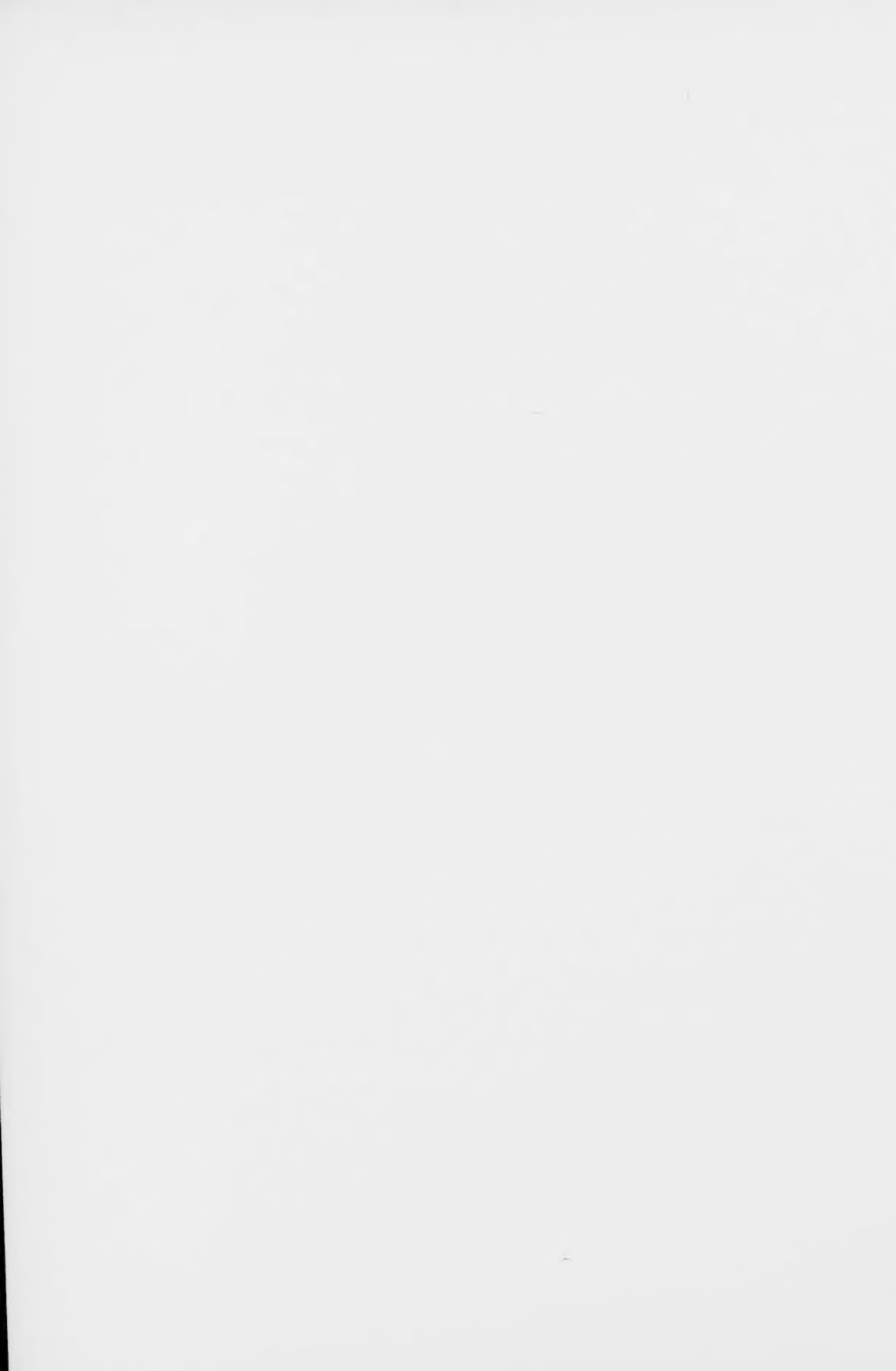
Attorney General's Opinion 25-88 at 1 (May 23, 1988) (Lodging Exhibit #4) makes it clear that neither Mr. Studer nor any other City official had the authority to control or direct the manner in which the plaintiff performed her statutory duties as City Clerk. The Attorney General was asked whether a county executive has the power "to reorganize another elected official's office and remove functions or responsibilities mandated by Wisconsin Statutes." The Attorney General noted that, like the broad home rule powers granted cities under the Wisconsin Constitution, a county's home-rule power remains subject to "the Constitution and any enactment of the



Legislature which is of statewide concern..."
Sec. 59.025, Stats., cf Wis. Const. Art XI,
Sec. 3 (Cities...may determine their local
affairs and government, subject only to this
Constitution and to such enactments of the
Legislature of statewide concern...") The
statutes set forth specific duties to be
performed by the county officers such as the

county clerk. Op. Att'y Gen. 25-88 at 5 n.3.
Those statutes, he concluded, were laws "of
statewide concern" that limit county home-rule
powers. Id. at 3.

Despite the legislative recognition of
counties' need for flexibility in
administration and management, "it remains
true that counties have only such powers as
are expressly granted or necessarily implied."
Id. at 4, citing Town of Vernon v. Waukesha
County, 102 Wis.2d 686, 307 N.W.2d 227 (1981).



The opinion concluded that notwithstanding a county's home-rule powers, the principal county officers have the "implicit authority...to exercise substantive administrative and management functions vested in them by law, free of supervisory control by the county executive, administrator or coordinator." Id at 5-6. (emphasis added).

The Attorney General's reasoning is directly applicable to this case.

Notwithstanding its powers under the home-rule amendment, therefore, the City of Middleton could not place the City Clerk under the supervisory control of another city officer -- through a tailored job description or by any other method. No city officer could direct the manner in which the Clerk performed her statutory duties. Mr. Studer exceeded his authority when he ordered her to work on the voter registration lists in the Council

Chambers (out of my office) and when he disciplined her for lecturing at the Middleton High School about city government.

In Marbury v. Madison, Marbury needs freedom to act and my two supervisors curtailed this as much as possible, taking out the joy and satisfaction that I would normally derive from a job well done. Mr. Studer tried to make it so that I couldn't even move without his permission!

Mr. DeVore created a position of City Administrator/Deputy Clerk/Deputy Treasurer that was, in effect, really responsible to no one. He played the Mayor off against the Clerk and the Clerk couldn't enforce her desires, so he could do as he pleased, which was very little. He was a comfort zone underachiever.

Yet, the City paid over \$35,000 plus fringes for a person to see that everyone else did their job, but had no real job of his own. I believe most employees are considered to be responsible adults, and there were Department Heads to supervise, so this was an extra layer of supervision that was not needed. The Mayor and Council Members, in effect, were also supervisors.

No City Charter was adopted and Middleton General Ordinance 2.03 APPOINTED OFFICIALS.

(1) Appointments by the Common Council. The following offices shall be filled by appointment by a majority vote of the Common Council for a definite term, subject to removal by a two-thirds vote of the Common Council for incompetency, misconduct, inefficiency or failure to perform duties:

Clerk	Engineer-Public Works Dir.
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Deputy Clerk- Treasurer	Attorney
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Treasurer-Financial Dir.	Assessor
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Administrative Assistant

The length of the term and compensation of each office shall be determined by the Common Council at the time of hearing.

Adopted at a regular meeting of the Middleton Common Council held September 18, 1979.



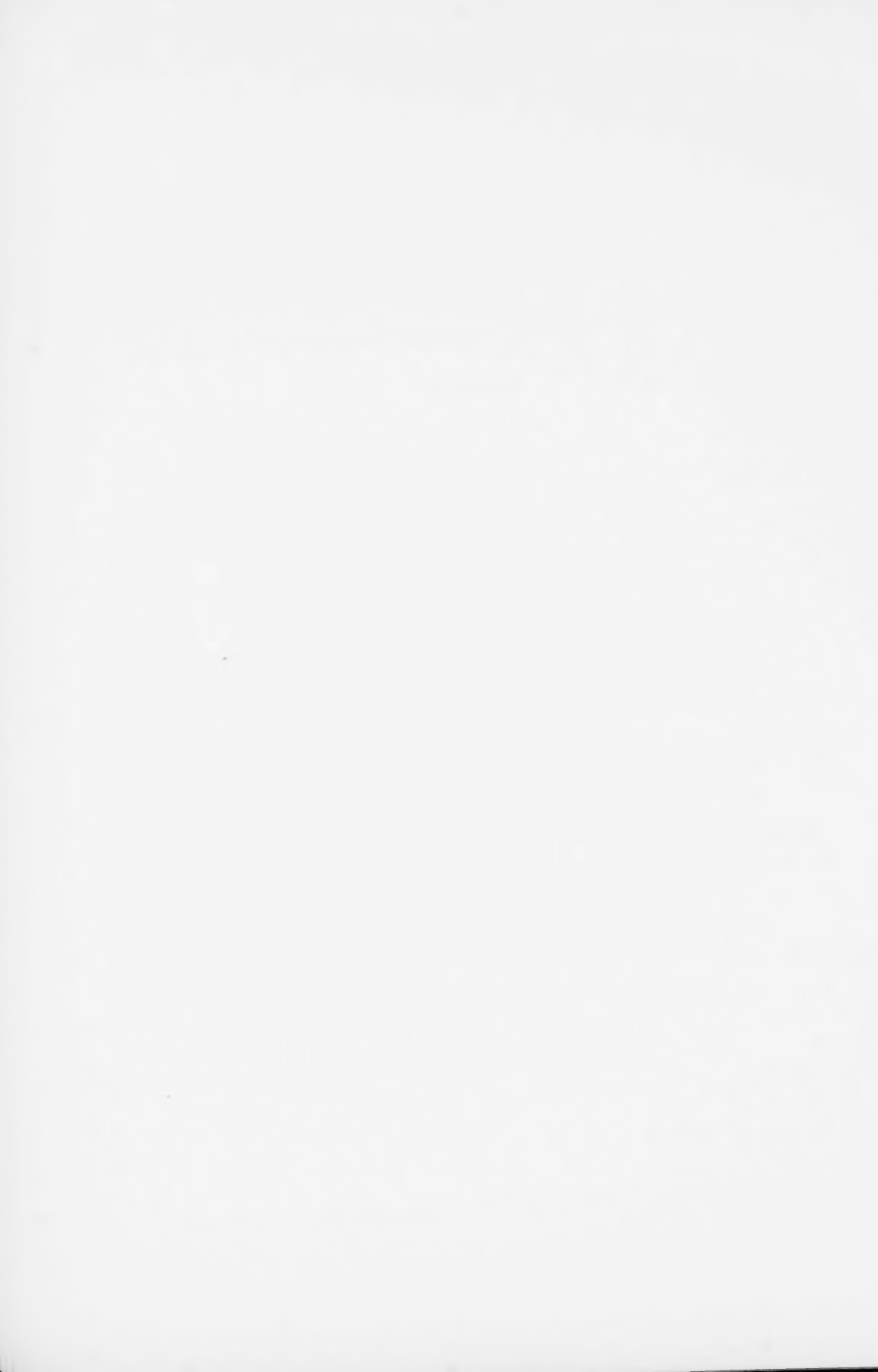
The City also got ultra vires results when they enacted this structure but required Mr. Studer and Mr. Devore to "help the Clerk" even though they were the Clerk's supervisors and therefore helped when "they felt like it" and not when the Clerk said she needed it.

I, as City Clerk/Relief Director had the most stressful tasks, including definite time constraints, and I did more overtime than any other employee of the City.

I had to do more overtime because I was denied the usual delegatory powers that a statutory officer would have, and that is provided in the Wisconsin Statute.

The Clerk's statutory duty of "collecting all monies due the City" imposes a very important time constraint. In a seminar that I attended this past year on Collecting Account Receivables, it was pointed out that 10% was lost within the first 10 days and after 100 days, it is difficult to collect over half of the debts.

Now this is a power that is used to make the government efficient and it is something that the Federal Government could use to reduce the deficit, to some extent. All businesses, who are run in a business-like manner, are very aware of the timing of their accounts receivable.



My first inkling that all was not well was when I asked the City Administrator/Deputy Clerk for permission to send a memo to the Mayor and Common Council members about welfare costs. He told me to throw it in the wastebasket. Is this proper supervision and guidance to a new employee? Don't the Mayor and Common Council members have a right to know that only \$170 was collected in all of 1981 while I collected \$3,000 for the first six months of 1982, with spending of \$5,000 in each year? I actually wanted to correct an erroneous statement that an Aldermanic Representative made at the previous Council meeting but the memo also points out the poor performance in years previous to my arrival.



This action falls under Public Law 101-12 Whistleblower Protection Act of 1989, section 1213.(a)1(A) and (B) and (C)(2)(B) and 1214(a)(2)(5) except that I am not a federal employee.

Particularly pertinent is Sec. 1213(a)(1)(B) "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;".

Wisconsin also has a Whistleblower Protection Act, authored by Senator Russell Feingold D-Middleton) and I am currently a State of Wisconsin governmental employee, but then I was a local governmental employee.

GRIEVANCES:

My first grievance occurred when Mr. Studer and Mr. Devore reprimanded me for writing to the Mayor and Common Council, asking for advice about obeying the open records law which required posting of the organizational structure of the City. The reprimand was withdrawn but I never received any advice about what to do.



In my second grievance, I took less than two hours off after working the day before until midnight for the Presidential election and I had not been required to give notice or get permission prior to this reprimand. A work rule cannot be valid if it was not enforced before, or if it is selectively enforced.

As my Attorney James Doyle stated, This was retaliation for losing the first reprimand."

As was Mr. Studer's action in tampering with my car brakes. Are you going to tell me that it is a supervisor's proper role to try to kill their employees?

After the third grievance, I was deprived of two days without pay (unconstitutional) for refusing to move out of my office and into the Council chambers on the deadline for filing nomination papers. I still have not received that pay.



In my fourth grievance, I was reprimanded and given four days without pay by Mr. Studer and Mr. Devore for talking to the High School's "Government, Law and You" classes about city government, elections and the organizational structure but this was overturned by the Personnel Committee to just a reprimand.

I did verify that my Deputy would be in the office and could cover for my duties, as provided by Wisconsin law.

I might add that my talk was well-received, and this is especially important in light of the low voting turnout that we are seeing in our young people today. (Lodging Exhibit #5).

Under sec. 1452, free speech cases, review of evidence, "In cases involving free expression, the U.S. Supreme Court has the obligation not only to formulate principles capable of general application, but also to



review the facts to insure that the speech involved is not protected under federal law; while this duty has been most often recognized in the context of claims that the expression involved was entitled to protection under the First Amendment of the Federal Constitution, the same obligation exists in cases involving speech claimed to be protected under the Federal labor laws; the court must make an independent examination of this whole record so as to assure itself that the judgment under review does not constitute a forbidden intrusion on the field of free expression. Letter Carriers v. Austin, 418 U.S. 264, 41 L Ed 2d 745, 94 S. Ct. 2770.

Despite Judge Bardwell's injunction, the City decided to demote me to City Clerk/Welfare Clerk and add Welfare Director to Mr. Studer's duties, over the objections of the Welfare Board who didn't like Mr. Studer because he tried to "shut them out of the process" and



never brought any appeals to the Board. When this went through, the Chairperson of the Welfare Board resigned.

The final step was the Mayor's decision to "reorganize the front office." The positions of City Clerk and Financial Director were combined and the Republican panel selected Mr. Studer, so I was reorganized out, effective January 1, 1986. Mr. Devore and Mr. Studer had finally succeeded in getting rid of me but I hope they weren't rewarded for it because they didn't deserve any reward, not from me and not from the two previous Clerks who suffered under this unworkable system. There was a past pattern and practice in their behavior. If anything, Mr. Studer and Mr. Devore should be punished for making such trivial reprimands when I had twice the workload they did and, as City Clerk, received 90% of the mail that came to City

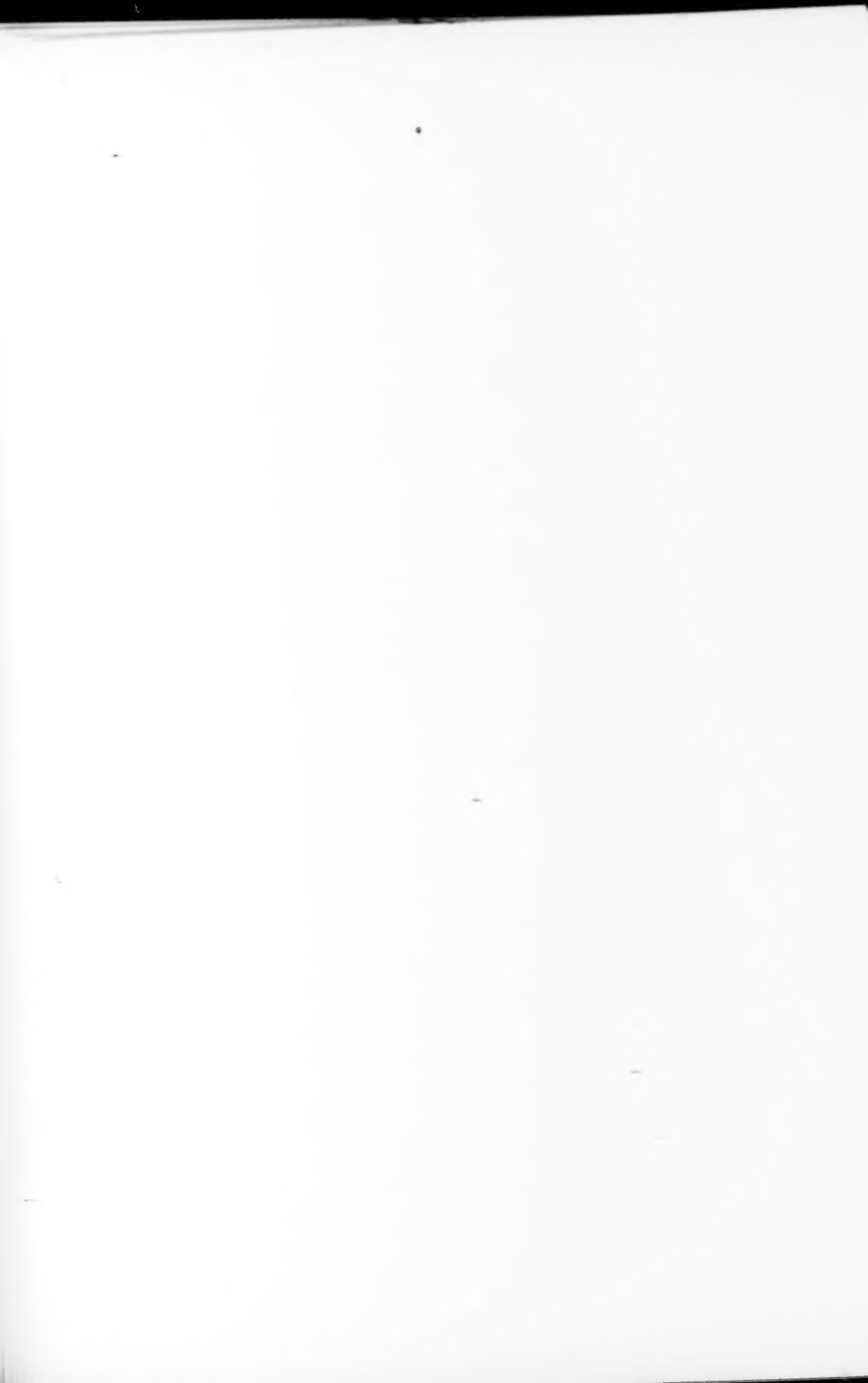
Hall. Mr. Devore and Mr. Studer kept my mail and conspired to violate my civil rights, which is similar to thieves who do not admit that their victims have any rights at all.

I assert that Mr. Devore and Mr. Studer were not concerned with the effective functioning of the workplace but with their own little

power bases. Mr. Studer did not respond to a letter for 30 days, even though it asked for a prompt response, and Mr. Devore held a letter for ten days before putting it in my mailbox and then tried to get me in trouble for not responding sooner. There are other examples. This is malice or greed, hiding under the cloak of supervision. They created the turnover in Clerks (and received raises) and then decried the difficulty of getting good Clerks.

For damages, I am asking for \$800,000 for violation of my civil rights and \$50,000 each personally from Mr. Studer and Mr. DeVore for their unnecessarily punitive and malicious conduct.

I am also asking for payment of all my attorney fees, including reimbursement of my State Retirement Funds, copy costs, court costs and any related expenses that I may yet have to incur, including travel and lodging expenses.



RULE 14.1(i):

JUNE 6, 1990 ORDER:

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

June 6, 1990

BEFORE

HON. RICHARD A. POSNER, Circuit Judge

HON. JOHN L. COFFEY, Circuit Judge

HON. JOEL M. FLAUM, Circuit Judge

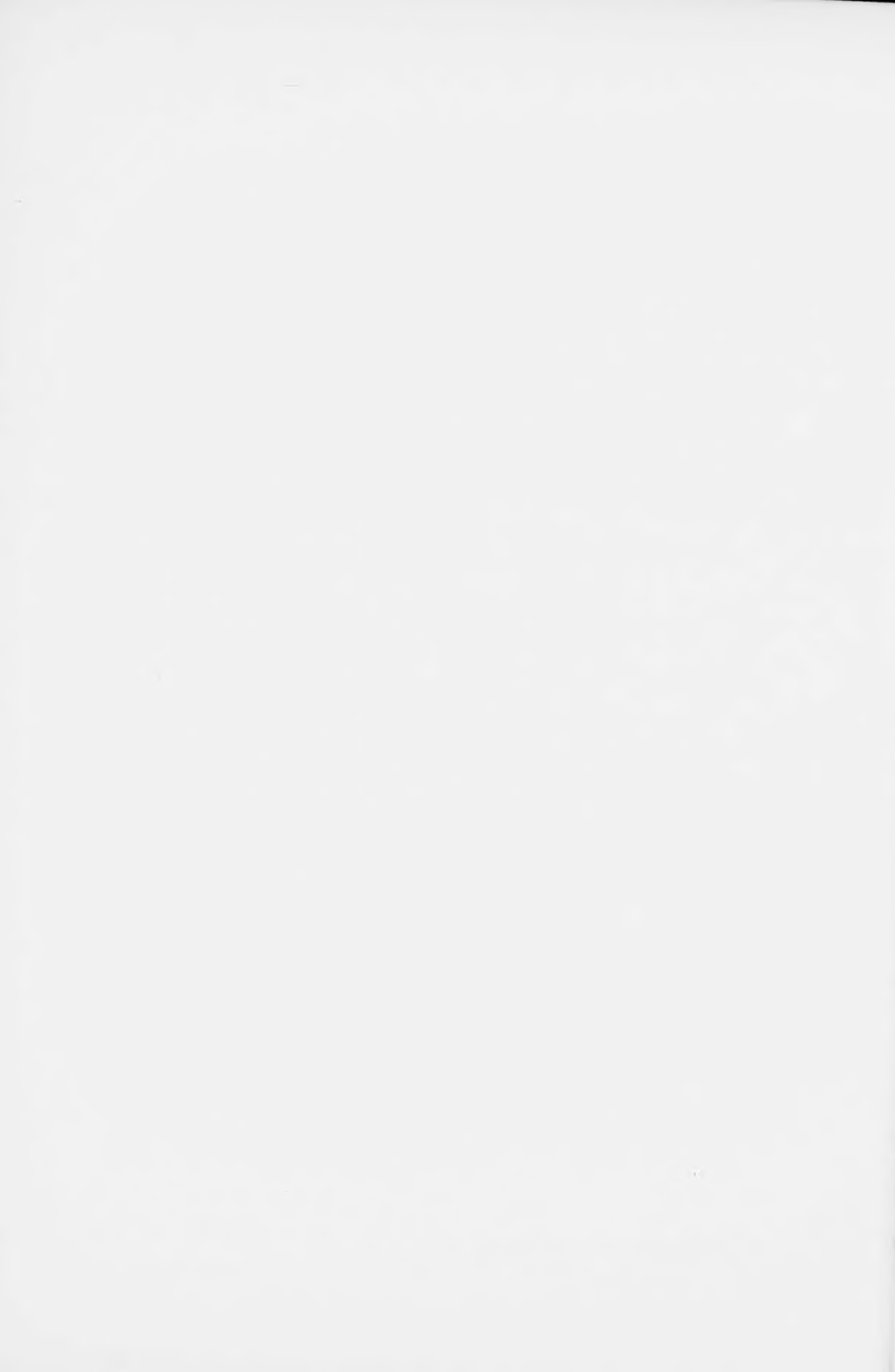
SYLVIA J. DENNIS,	Appeal from the
Plaintiff-Appellant), United States	
No. 90-1897	V. District Court for
CITY OF MIDDLETON,	Western District of
TIMOTHY R. STUDER, and	Wisconsin.
JOEL G. DEVORE,	No. 89-C-1096
Defendants-Appellees.	Hon. John C. Shabaz,
	<u>Judge</u>



O R D E R

On consideration of the "JURISDICTIONAL MEMORANDUM" filed on May 8, 1990 and the "CIRCUIT RULE 3(c) JURISDICTIONAL STATEMENT" filed on May 25, 1990 by pro se appellant,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction. Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the District Court within 30 days of the entry of the Judgment appealed. In this case, judgment was entered on March 19, 1990, and the notice of appeal was filed on April 19, 1990, one day late. The District court has not granted an extension of the appeal period, see Rule 4(a)(5), and this Court is not empowered



to do so, see Fed. R. App. P. 26(b). Misleading advice from an employee of the Clerk's office cannot extend the deadline for filing the notice of appeal. See Sonicraft, Inc. v. N.L.R.B., 814 F.2d 385, 387 (7th Cir. 1987). We express no opinion on the availability of the extraordinary relief provided by Fed. R. Civ. P. 60(b) to revive a lost right to appeal. See Spika v. Village of Lombard 763 F.,2d 282 (7th Cir. 1985).



UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT - WITHOUT ORAL ARGUMENT

Date: April 4, 1990.

BEFORE: Hon. Harlington Wood, Jr., Circ. Judge

Hon. Daniel A. Manion, Cir. Judge

Hon. Michael S. Kanne, Cir. Judge

No. 89-1209_

SYLVIA J. DENNIS,

Plaintiff - Appellant

v.

CITY OF MIDDLETON, TIMOTHY R. STUDER, and JOEL

G. DEVORE,

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Wisconsin,

No. 88 C 1057, Judge John C. Shabaz



This case came before the Court for decision on the record from the above mentioned district court.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the District Court in this cause appealed from be, and the same is hereby, AFFIRMED with costs, in accordance with the order of this Court entered this date.

O R D E R

Pro Se appellant Sylvia J. Dennis appeals from the District Court's grant of defendants' motion to dismiss her civil rights action. We affirm.

I.

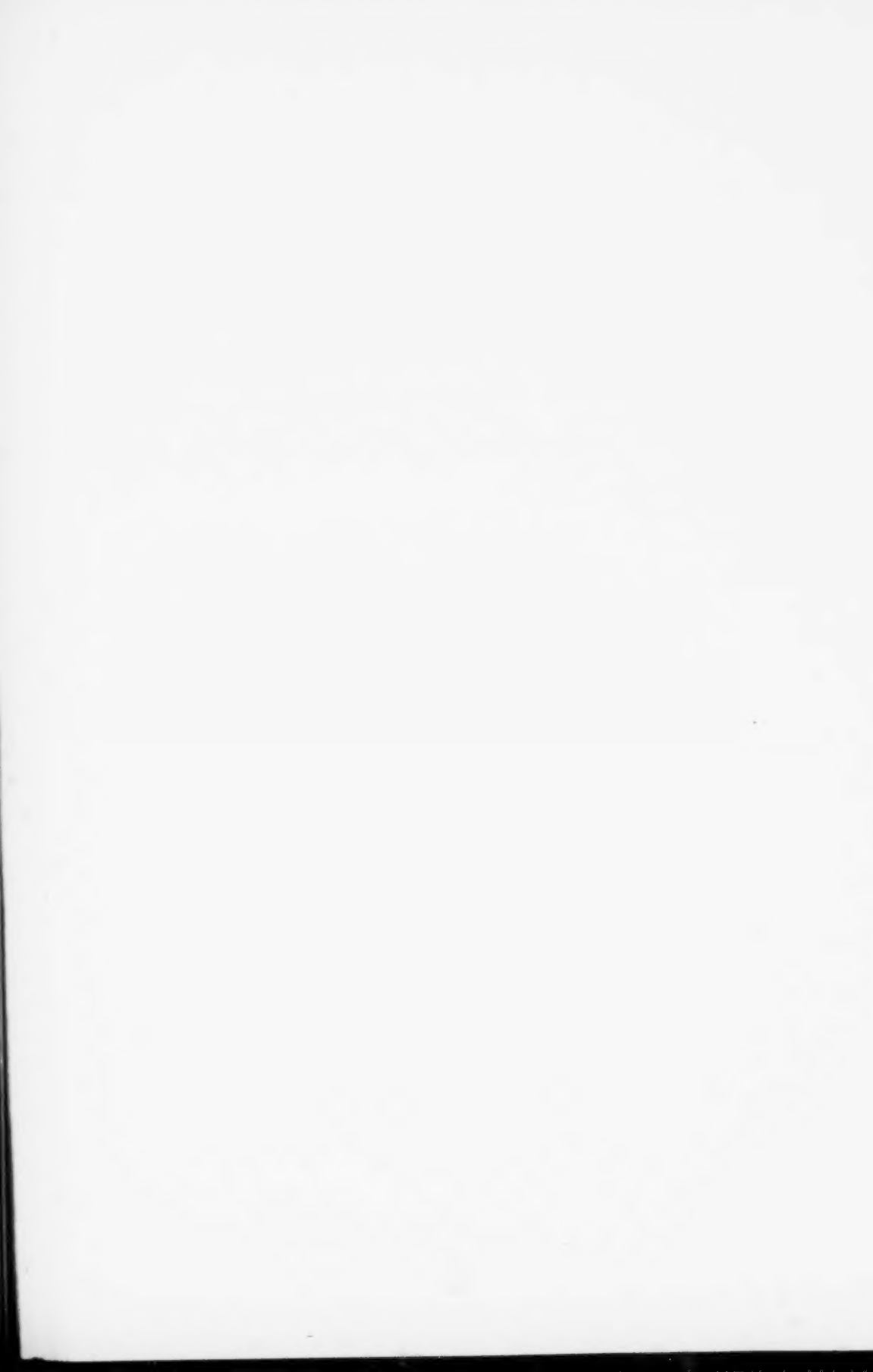
From June 14, 1982 until December 31, 1985, Dennis served as City Clerk and Welfare Clerk in Middleton, Wisconsin. Appellee Studer served as City Finance Director and City



Treasurer, and later also as Welfare Director, during Dennis ' employment. Appellee Devore served during this time as City Administrator and Deputy Clerk. All of Dennis' claims arise from this employment situation.

Dennis' claims in the district court and on appeal are as follows. Her primary argument is that the organization structure of the City of Middleton is unconstitutional. Underlying this position are her beliefs that the City Clerk should not be supervised by another city officer, specifically here referring to the City Finance Director/Treasurer (Studer) or the City Administrator/Deputy Clerk (Devore), and that she was treated as a clerical employee rather than a "statutory officer."

Second, Dennis alleges that mail addressed to the City Clerk was delivered first to her supervisors (appellees Studer and Devore) and that she sometimes never received such mail.



Dennis does not address this claim under any rubric of any particular constitutional right, but claims that it damaged her professional reputation and constituted the blocking of communication to and from the general public.

Next, Dennis challenges three reprimands primarily initiated by appellee Studer: a four day suspension (later reduced to a statement of reprimand) for taking time off to conduct a lecture at a local high school; a reprimand letter for taking two hours off following an election; and a reprimand letter for failing to work on a project in Council Chambers when Studer specifically informed her to do so.

Dennis next cites three incidents as violations of her freedom of speech. First, she claims Devore engaged in censorship by telling her to file a memo she wrote about welfare costs in the wastebasket rather than send it to the Mayor and City Council Members.



Second, she claims she should not have been reprimanded for informing the Mayor and the City Council that the City was not obeying the open records law. Third, Dennis claims Studer would not allow her to attend various meetings on issues related to her job.

Dennis's final claim challenges the Council's reorganization of City officer positions, which resulted in the termination of her position and the creation of a combined City Clerk/Financial Director position, which both she and Studer applied for and for which Studer was accepted.¹ Dennis requested damages against all three appellees, and reinstatement as City Clerk.

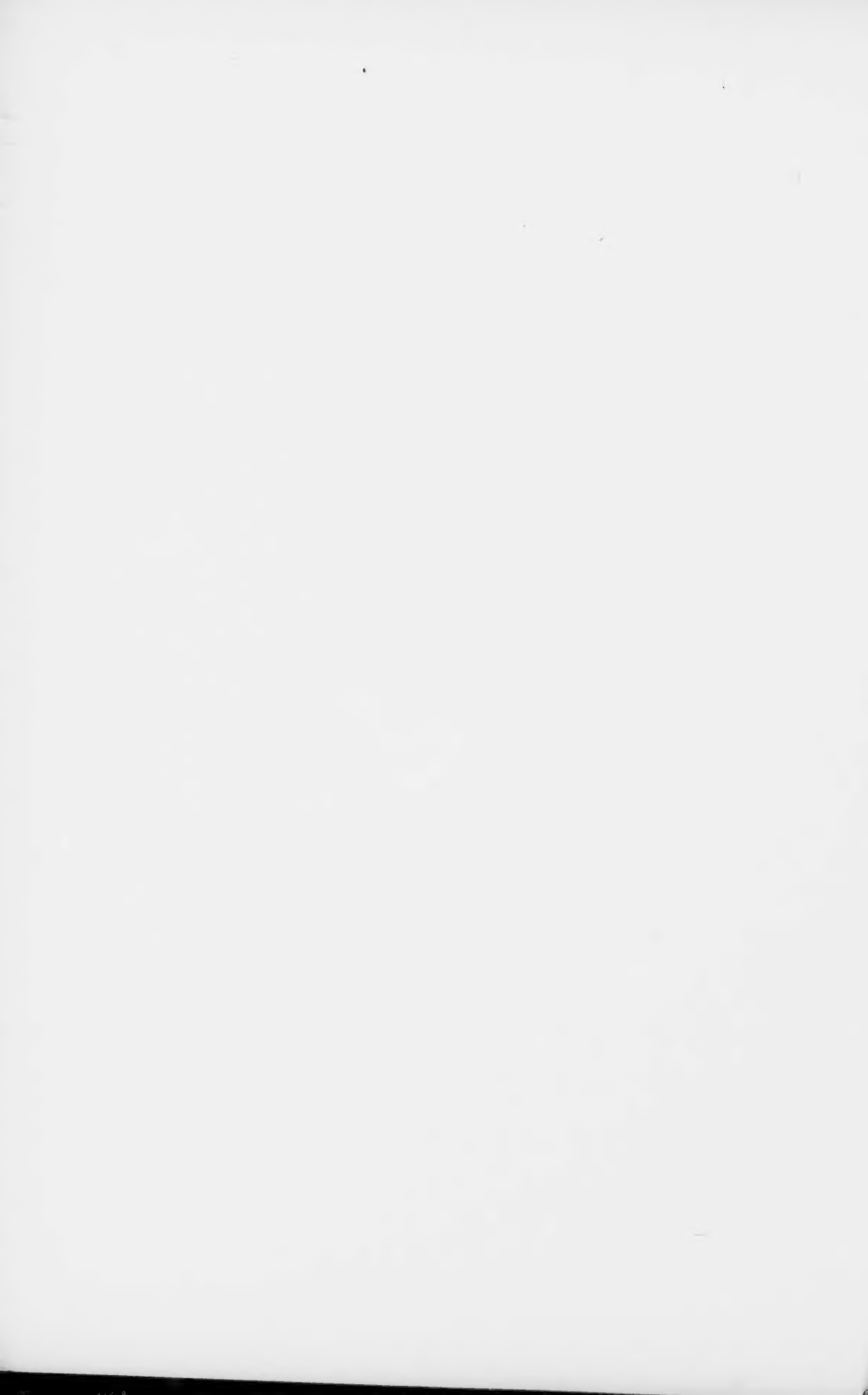
¹ Dennis' complaint also alleged a violation of 18 U.S.C. SEC. 2385, claiming that defendants conspired to deprive her of her civil rights. The district court held that claims under this section cannot be prosecuted by the government, and because Dennis has since referred the matter to the U.S. attorney's Office for investigation, the court does not question the district court's decision on this issue. This issue is not before us on appeal.



II.

A.

We begin by noting that the district court dismissed two of Dennis' claims under the statute of limitations. Judge Shabaz applied the three year statute of limitations of Wis. Stat. sec. 893.54 (Wisconsin's personal injury statute). However, since the district court's decision was issued, we have held that the Wisconsin statute of limitations period applicable in 42 U.S.C. SEC. 1983 actions is the six year period of the state's personal rights statute, found in Wis. State. sec. 893.53. Gray v. Lacke, 885 F.2d 399, 408-09 n.4 (7th Cir. 1989); see also Kuemmerlein v. Board of Ed. of the Madison Metro. School Dist., No. 89-1730, slip op at 4 (7th Cir. Jan. 30, 1990.) Dennis filed her complaint on November 25, 1988, and therefore the statute does not bar any claims occurring on or after November 25, 1982. The earliest incident



alleged in Dennis' complaint occurred in early September, 1983, and all of her claims include incidents occurring after November 25, 1982. Therefore, the statute of limitations does not serve as a bar to her action.

B.

The district court characterized Dennis' claim regarding the organization of the clerk's office as alleging a due process violation, and found that that claim was barred by res judicata because the issue had been addressed in an action brought by Dennis in state court and decided against her. The district court then found that her remaining claims failed to state a cause of action under federal law. However, notwithstanding the application of res judicata to bar some of the claims raised, Dennis has stated no cause of action regarding any of her claims.

Dennis' challenge to the organization of the Middleton Clerk's office is not based on any specific constitutional right; rather, she simply asks for "an opinion on the constitutionality of such a structure." Complaint at 2. Her claim is that her position qualifies her as an officer under state statutes, and that the City failed to treat her as such. Similarly, her claim regarding the structure of the office challenges the statutory make-up of the City government. Both of these questions are purely local employment and personnel concerns which the federal courts should not preside over, and which do not state any elements of federal constitutional or statutory violations. See Bishop v. Wood, 426 U.S. 341, 349-50 (1976); Connick v. Myers,

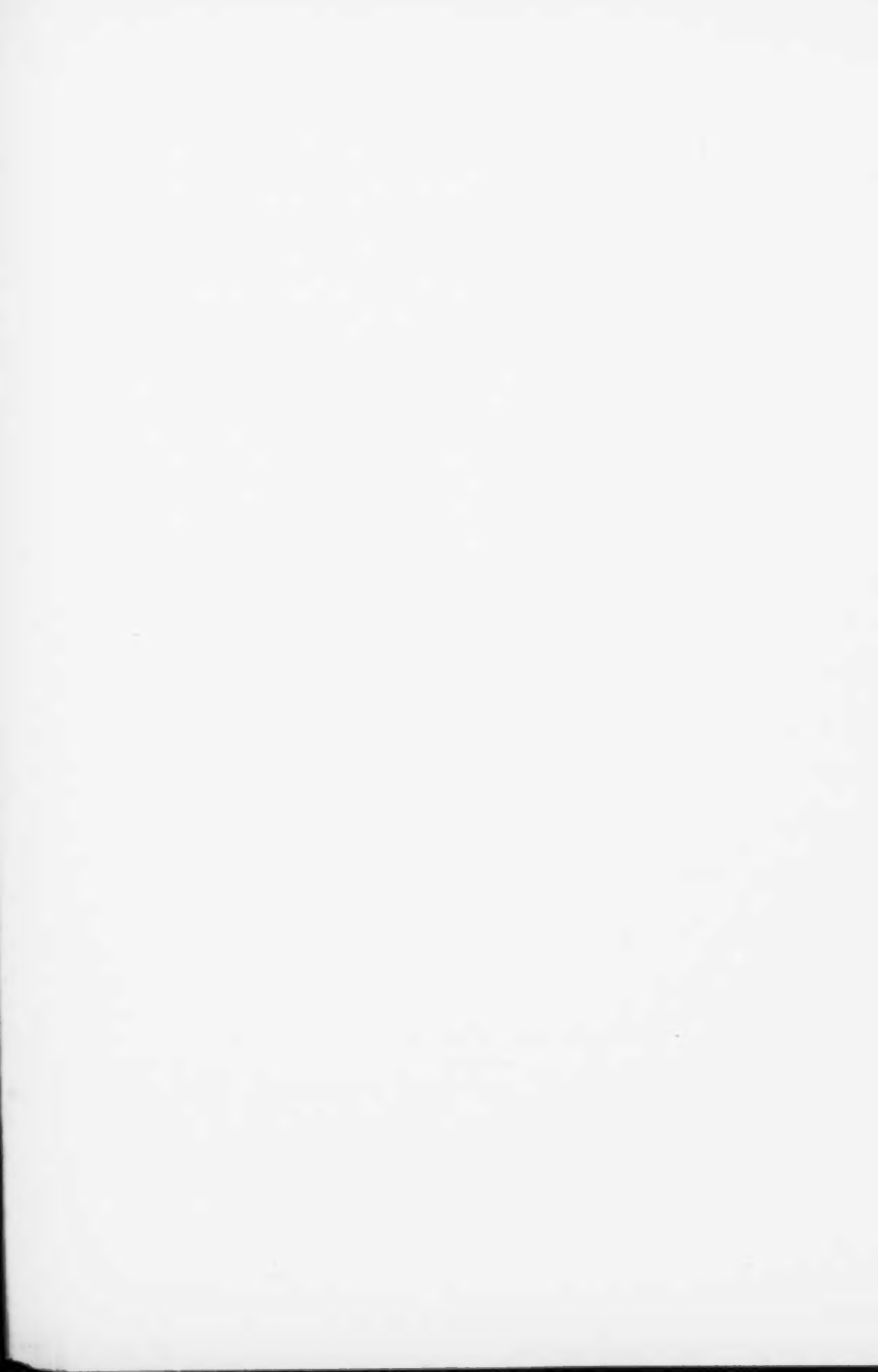
461 U.S. 138, 143 (1983); Rutan v. Republican Party of Illinois, 868 F.2d 943, 954 (7th Cir. 1989), Cert. granted, 110 S. Ct. 48 (1989).

Similarly, Dennis' claim that her mail should not have been routed through her superiors challenges a decision made at the local level as to the proper organization of the City Clerk's office. The details of running the city governmental structure are purely local concerns, and do not touch upon federal rights. Her claim that her reputation was damaged by not receiving, and hence not answering, some of the mail does not rise to the level of a due process deprivation, but rather is only a personnel grievance which should be dealt with at the local grievance level. Dennis' challenge to the three reprimands she received suffers from the same deficiencies. The incidents involved local rules of procedure or authority structures which Dennis violated: in two of the situations Dennis failed to request leave time in advance, as required by Middleton General



Ordinance sec. 27.21(1)(c), and in the other she failed to follow her supervisor's instructions as to where she should perform a particular project.

While Dennis does cite the First Amendment as the basis for her next three claims, she does not allege any protected First Amendment interests that were violated. As to the memo which her supervisor told her to file in the wastebasket, Dennis has no right to have her suggestions approved by her supervisor and sent along to those who could implement them. Similarly, she has no constitutional right to have her employer allow her to attend meetings that relate to her job. Finally, her reprimand for not following the proper channels for informing the Mayor and City Council that the City was not following the open records law was not aimed at her "speech"



but rather at her failure to follow the procedures required under the local rules of government that she first present the issue to her immediate supervisors. As in the above discussion, such matters are to be made by local governments and not interfered with at the federal level. Moreover, Dennis herself admits that this reprimand was later withdrawn. Complaint at 6. While "speech" is technically involved in each of these incidents, the circumstances and type of speech involved are not entitled to First Amendment protection. Rutan, 868 F.2d at 948 ("public employer work rules that are legitimately related to the workplace's effective functioning and not 'aimed at particular parties, groups or points of view' do not violate the First Amendment even though the rules may negatively affect employees' speech or political association.")



Finally, Dennis' challenge to the reorganization which eliminated her position does not allege that the reorganization was connected to the exercise of any First Amendment rights on her part. The reason for the reorganization was that the county took over the welfare duties previously performed by the City, at which time the Middleton City Council decided that the finance and city clerk duties of the office could be performed by one individual. Other than a vague reference that "the [Personnel] Committee may have been stacked with Republicans", Dennis does not relate the elimination of her position to the exercise of any protected constitutional activities.

The district court's dismissal of Dennis' civil rights action is AFFIRMED.

RULE 14.1 ANY OTHER OPINIONS, ORDERS RENDERED
IN THE CASE BY COURTS.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SYLVIA J. DENNIS,

Plaintiff,

V.

ORDER

CITY OF MIDDLETON,

89-C-1096-S

TIMOTHY R. STUDER, and

JOEL G. DEVORE,

Defendants.

Plaintiff commenced this action on December 14, 1990. On December 21, 1990 defendants filed a motion to dismiss plaintiff's complaint. The Court ordered that plaintiff submit her response by March 8, 1990 which she did, and defendants have not replied.

The Court will decide the defendants' motion on the present record. For purposes of deciding this motion the allegations in plaintiff's complaint are assumed to be true.



FACTS

Plaintiff was the City Clerk of the City of Middleton. She was supervised by Timothy G. Studer, the Finance Director and Joel G. DeVore, the City Administrator. The Personnel Committee was biased against plaintiff when she filed grievances. She was discharged from her position as City Clerk.

Plaintiff challenged her discharge in a case before the Dane County Circuit Court, Case No. 85-CV-2567. She also filed a civil suit in this court challenged her discharge, Case No. 88-C-1057-S.

OPINION

Defendants claim that plaintiff's complaint should be dismissed because it fails to state a claim for relief under federal law. In addition they argue that any claim concerning plaintiff's discharge is barred by the doctrine of res judicata.

The internal organization of the City of Middleton provided that the City Clerk was supervised by the Finance Director and the City Administrator. Plaintiff is claiming that this was the reason for his discharge.

Plaintiff has not alleged facts that support any claim that her discharge violated any of her Constitutional rights or a federal law. Accordingly, the Court concludes that it does not have subject matter jurisdiction of plaintiff's claim. Ellsworth v. City of Racine, 774 F.2d 184 (7th Cir. 1985).

Even had plaintiff pursued a claim for relief under federal law it would be barred by the doctrine of res judicata since plaintiff has previously litigated her claim concerning her discharge as the City Clerk of the City of Middleton in both the state and federal court. Magnus Electronics, Inc. v. La Republica Argentina, 830 F.2d 1396, 1400 (7th Cir. 1987).

Plaintiff's complaint must be dismissed because it fails to state a claim for relief under federal law and because any such claim would be barred by the doctrine of res judicata. Defendants' motion to dismiss will be granted.

ORDER

IT IS ORDERED that defendants' motion to dismiss is GRANTED.



IT IS FURTHER ORDERED that judgment be entered
DISMISSING plaintiff's complaint and all claims contained
therein with prejudice and costs.

ENTERED this 19th day of March, 1990.

BY THE COURT:

JOHN C. SHABAZ

District Judge



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SYLVIA DENNIS,

Plaintiff, ORDER

V. 88-C-1057-S

CITY OF MIDDLETON,

TIMOTHY R. STUDER, and

JOEL G. DEVORE,

Defendants.

Plaintiff Sylvia Dennis, proceeding pro se,
filed this civil action on November 25, 1988,
claiming that her constitutional rights were
violated. On December 16, 1988, defendants
filed a motion to dismiss plaintiff's complaint
according to Rule 12(b)(6), Federal Rules of
Civil Procedure. This motion has been fully
briefed and is ready for decision. For purposes
of this motion the allegations in plaintiff's
case are assumed to be true.



FACTS

This is a continuation of plaintiff's Dane County Circuit Court action. Plaintiff's principal problem in her employment with the City of Middleton was its organizational structure. She did not receive mail addressed to her as City Clerk.

On September 9, 1983, plaintiff sent a note to Joel DeVore stating she wished to send an attached memo to the Mayor and Common Council members. Mr. DeVore suggested she file the memo in the wastebasket. She was reprimanded on April 27, 1984 by Timothy Studer for informing the Mayor and Council that the City was not obeying the open records law.

On September 6, 1984, plaintiff was demoted to City Clerk-Welfare Clerk. On January 11, 1985, plaintiff was reprimanded for talking to the "Government Law and You" classes at the high school.

In October 1985, the Clerk's office was reorganized. A combined Finance Director/City Clerk job was posted in-house. Both plaintiff and Timothy Studer applied. Timothy Studer was hired.



CONCLUSIONS OF LAW

Plaintiff claims that she was denied her due process and First Amendment rights. She also claims that she did not receive her mail.

Due Process Claims

Plaintiff claims her due process rights were violated because the City of Middleton's organizational structure provided that she be supervised by the City Treasurer and because this supervisor reprimanded her. These claims were both pursued in her state court action, Case No. 85-CV-2567. A final decision on the merits was reached in that case on December 5, 1988, which bars plaintiff's due process claims in this Court pursuant to the doctrine of res judicata. See Huffman v. Pursue, Ltd., 420 U.S. 592, 606 n. 18 (1975). Accordingly, defendants' motion to dismiss the due process claims will be granted.

First Amendment Claim

Plaintiff is claiming her First Amendment rights were violated by the defendants when she was disciplined for speaking to the Mayor and the City Council and demoted to City Clerk-Welfare Clerk in 1984. These claims are barred by the Wisconsin



ORDER

IT IS ORDERED that defendants' motion to dismiss is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of the defendants and against the plaintiff, DISMISSING her complaint and all claims contained therein with prejudice and costs.

ENTERED this 20th day of January, 1989.

BY THE COURT:

JOHN C. SHABAZ

District Judge



Statute of Limitations, Wis. Stat. sec. 893.54, because they were not brought within three years after the decision in Wilson v. Garcia, 471 U.S. 261, 266 (1985) entered April 17, 1985.

Defendants' motion to dismiss these First Amendment claims will be granted.

Plaintiff has shown no connection between the office reorganization in 1985, her resulting termination and any exercise of her First Amendment rights. She has not stated a claim that the reorganization was unconstitutional. Defendants' motion to dismiss as to this claim will be granted.

Mail Delivery Claim

Plaintiff claims that her mail was not delivered to her. However, the mail was addressed to the City Clerk and delivered to that office. Plaintiff has no federal or constitutional right to have the City Clerk mail delivered to her personally. Therefore, defendants' motion to dismiss this claim will also be granted.

Plaintiff may be attempting to raise a claim under 18 U.S.C. sec. 241 that the defendants conspired to violate her civil rights. However, this claim must be prosecuted by the government. Defendants' motion to dismiss this claim will be granted.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

SYLVIA J. DENNIS,

Plaintiff,

VS.

No. _____

CITY OF MIDDLETON, &

TIMOTHY R. STUDER &

JOEL G. DEVORE,

Defendants.

AFFIDAVIT OF SERVICE

STATE OF WISCONSIN }

COUNTY OF DANE }

I, Sylvia J. Dennis, being first duly sworn, on oath deposes
and says that she, on the 24th day of July, 1990, mailed 40
copies of the ^{corrected} Petition for Writ of Certiorari to the U.S.

Supreme Court and personally affixed first class postage and
addressed three copies of ^{corrected} Petition for Writ of Certiorari to Mr.
Timothy Studer and three copies to Mr. Joel DeVore,
addressed to City Hall, City of Middleton, 7426 Hubbard
Avenue, Middleton, Wisconsin, 53562 and three copies
addressed to: Attorney Bruce K. Kaufmann, City Attorney,
Jenswold, Studt, Clark, Hanson & Kaufmann, 16 N. Carroll
Street, Suite 900, Madison, Wisconsin 53703. His office phone
number is (608) 257-9281.

Dated this 24 day of July, 1990.

Sylvia J. Dennis

Sylvia J. Dennis, pro se

3001 West Beltline Hwy.

Middleton, Wisconsin 53562

(608) 831-5790 (Home) or

(608) 266-3865 (work)

Subscribed and sworn to before me

this 24 day of July, 1990.

Karen S. [Signature]

Notary Public, Dane County, Wisconsin

My Commission expires: 8-25-91.